

1 these

2 FINDINGS OF FACT

3 I

4 Appellant Bert Van Ossenbruggen (hereinafter "appellant") owns a
5 54 acre dairy farm located about three miles south of Mount Vernon on
6 the Burkland and Stackpole Roads. From about 1972 until February 1,
7 1980, appellant leased the farm; thereafter, he purchased it from his
8 mother.

9 II

10 Respondent Department of Ecology (hereinafter "DOE") is an agency
11 of the state with jurisdiction to enforce the provisions of chapter
12 90.48 RCW.

13 III

14 On February 11, 1980, DOE's inspector visited the appellant's farm
15 to take water samples from a drainage ditch located east of the farm
16 structures and to examine an area of the farm which has, in the past,
17 drained water from the farm into the drainage ditch. While on the
18 farm, the inspector saw a dark-brown colored, odorous liquid flowing
19 eastward and into the drainage ditch at an estimated 20 gallons per
20 minute. The liquid came from several sources on the farm, including a
21 watering trough, silage pit, and other sources near the barns. Most
22 of the liquid was rainwater mixed with dissolved organic materials
23 including feed and manure. The drainage ditch eventually reaches
24 Skagit Bay which is a water of the state.

25 IV

26 The inspector took a sample of the water in the drainage ditch

1 about 1000 feet north of the point of entry of appellant's effluent
2 and another sample about 3/4 miles south of that point. The samples
3 show that the quality of the water deteriorated with respect to
4 dissolved oxygen, nitrogen, and phosphorous parameters between the two
5 points sampled. Such deterioration in water quality affects wildlife
6 by disturbing the food chain, and contributes to undesirable odors at
7 residences located to the south of the farm.

8 V

9 Prior to the event observed on February 11, 1980, appellant was in
10 the process of installing gutters, downspouts and pipes on farm
11 buildings to direct rainwater from the area into the drainage ditch.
12 At the time of the event, the project was not completed. Rainwater
13 had collected in the ground and in hog fuel piles on the ground. The
14 water drained toward the drainage ditch carrying a variety of
15 pollutants and was observed by the DOE inspector. The improvements
16 made by appellant cost about \$26,000 at completion.

17 VI

18 For the water pollution observed on February 11, 1980, appellant
19 was sent a notice that a \$500 civil penalty was due. After
20 considering appellant's application for relief from the penalty, DOE
21 affirmed the \$500 penalty which was thereafter appealed to this Board.

22 VII

23 Any Conclusion of Law which should be deemed a Finding of Fact is
24 hereby adopted as such.

25 From these Findings the Board comes to these

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 CONCLUSIONS OF LAW

2 I

3 RCW 90.48.080 makes it unlawful for any person to cause, permit,
4 or suffer to be drained, run, seep, or otherwise discharged into
5 waters of the state, any organic or inorganic matter that causes or
6 tends to cause pollution of such waters.

7 RCW 90.48.020 defines "waters of the state" to include Skagit
8 Bay. "Pollution" means "such contamination, or other alteration of
9 the physical, chemical or biological properties, of any waters of the
10 state, including change in temperature, taste, color turbidity, or
11 odor of the waters, or such discharge of any liquid, gaseous, solid,
12 radioactive, or other substance into any waters of the state as will
13 or is likely to create a nuisance or render such waters harmful,
14 detrimental or injurious to the public health, safety, or welfare, or
15 to domestic, commercial, industrial, agricultural, recreational, or
16 other legitimate beneficial uses, or to livestock, wild animals, birds
17 fish or other aquatic life."

18 RCW 90.48.144 provides for a penalty of up to \$5,000 a day for
19 each violation of RCW 90.48.080.

20 II

21 The liquid from appellant's farm which drained into the ditch on
22 February 11, 1980, caused pollution of the waters of the state. Such
23 "pollution" was shown by DOE even without the benefit of the
24 laboratory samples by the inspector's description of the effluent and
25 the consistent statement of appellant that he was "sure that water was
26

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 dirty." A scientific analysis is not always required to establish
2 water pollution. See B&W Construction v. Lacey, 19 Wn. App. 220, 224
3 (1978). The sample results are consistent with the inspector's
4 observations. DOE did not establish that appellant was the only cause
5 of the pollution identified in the samples, because there are sources
6 of water to the drainage ditch other than appellant's. However,
7 appellant's contribution to the drainage ditch was a material element
8 and substantial factor causing the pollution observed in the ditch.

9 III

10 Appellant violated RCW 90.48.080 on February 11, 1980, for which a
11 penalty was properly imposed. The amount of the penalty, \$500, is
12 reasonable in light of the circumstances of this event and should be
13 affirmed.

14 IV

15 Any Finding of Fact which should be deemed a Conclusion of Law is
16 hereby adopted as such.

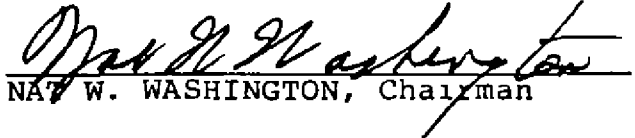
17 From these Conclusions the Board enters this
18
19
20
21
22
23
24
25

ORDER

The \$500 penalty assessed by the Department of Ecology on Bert Van Ossenbruggen is affirmed.

DATED this 27th day of October, 1980.

POLLUTION CONTROL HEARINGS BOARD


NAT W. WASHINGTON, Chairman


DAVID AKANA, Member